APPENDIX A

GEORGE GLASCOE	*	IN THE
	*	COURT OF APPEALS
	*	OF MARYLAND
	*	Petition Docket No. 653
SHOPPERS FOOD WAREHOUSE MD. GROUP	*	September Term 1997
	*	(No. 905, Sept. Term 1997, Court of
	*	Special Appeals)

ORDER

Upon consideration of the petition for writ of certiorari to the Court of Special Appeals, and the answer filed thereto in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell
Chief Judge

DATE: APR 7 1998

APPENDIX B

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 905

September Term, 1997

GEORGE GLASCOE

SHOPPERS FOOD WAREHOUSE MD CORP.

Davis,
Salmon,
Eyler,

JJ.

Opinion by Eyler, Jr.

Filed: January 27, 1998

#CAL9523166

On March 25, 1995, appellant, George Glascoe, slipped and fell in a grocery store owned by appellee, Shoppers Food Warehouse Md Corp., located in Takoma Park, Maryland. On the day of the accident, appellant, a regular customer of the store, was shopping alone and walking with a cane. He fell on a floor mat located in the entrance foyer of the store. The mats were three feet by nine feet in size and had a rubber backing with a carpet material on top. Appellant testified that he fell on the mat located closest to the entrance.

Appellant filed suit against appellee in the Circuit Court for Prince George's County seeking compensation for personal injuries sustained as a result of the fall. Appellant alleged that appellee was negligent in the use of unsafe mats and in failing to inspect and maintain the mats.

The case was tried before a jury. At the close of appellant's case, appellee moved for judgment on the ground that the evidence was legally insufficient to sustain a finding of liability. The trial court reserved on the motion. Appellee renewed its motion at the close of all of the evidence, and the trial court again reserved. The jury found appellee guilty of negligence, found that the negligence was a proximate cause of appellant's injuries, and awarded damages. Appellee moved for judgment notwithstanding the verdict, or in the alternative, a new trial. The trial court granted the motion for judgment notwithstanding the verdict on the ground that the evidence was legally insufficient to sustain the jury's findings.

Questions Presented

Appellant poses three questions, which are variations of but one question: Did the trial court err in granting appellee's motion for judgment notwithstanding the verdict?

Standard of Review

The Court of Appeals, in Houston v. Safeway, 346 Md. 503 (1997), recently reiterated the standard applicable to the issue before us:

> If a court reserves its ruling on a motion for judgment that is made at the close of evidence, the motion "becomes a motion for judgment notwithstanding the verdict if the verdict is against the moving party. . . ." Maryland Rule 2-532(b). When reviewing a judgment n.o.v., "this Court must resolve all conflicts in the evidence in favor of the plaintiff and must assume the truth of all evidence and inferences as may naturally and legitimately be deduced therefrom which tend to support the plaintiff's right to recover - that is, the evidence must be

viewed in the light most favorable to the plaintiff." **Smith v. Bernfield**, 226 Md. 400, 405, 174 A.,2d 53, 55 (1961) (citations omitted). We have explained that: "As with respect to a judgment n.o.v., * * * [i]f there is any legally relevant and competent evidence, however slight, from which a rational mind could infer a fact in issue, then a trial court would be invading the province of the jury by declaring a directed verdict." **Impala Platinum v. Impala Sales**, 283 Md. 296, 328, 289 A.2d 887, 905-06 (1978). Stated another way: "Only where reasonable minds cannot differ in the conclusions to be drawn from the evidence, after it has been viewed in the light most favorable to the plaintiff, does the issue in question become one of law for the court and not of fact for the jury." **Pickett v. Haislip**, 73 Md. App. 89, 98, 533 A.2d 287, 291 (1987), cert. denied, 311 Md. 719, 537 A.2d 273 (1988). If judgment n.o.v. has been granted in error, the reviewing court may vacate the erroneous judgment of the trial court and reinstate the verdict of the jury. Md. Rule 2-532(f)(1); see **McSlarrow v. Walker**, 56 Md. App. 151, 161, 467 A.2d 196, 20 (1983), cert. denied, 299 Md. 137, 472 A.2d 1000 (1984).

Id. at 521-22.

Discussion

Appellant's theory at trial was the appellee was negligent in the use of low-grade rubber mats which were not "non-slip." At trial, appellant argued that (1) the mats did not cover a sufficient area, (2) did not have beveled edges, and (3) were prone to "bunching." These conditions, according to appellant, created a tripping hazard. Relying on Moore v. American Stores Company, 169 Md. 541 (1935), appellant asserts that when a dangerous condition of a floor exists, the question of negligence of the owner of the premises is a fact question. In Moore, the dangerous condition of the floor was that it was greasy. In this case, the dangerous condition of the floor in question, according to appellant, is that it was covered with "cheap, slippery

floor mats." As additional evidence of negligence, appellant relies on the evidence of appellee's failure to inspect the floor and mats on a frequent basis.

The pertinent evidence consists of the testimony of appellant and an expert witness, Dr. Stephen I. Rosen, which we review in the light most favorable to appellant. The pertinent portion of appellant's testimony, on direct examination, is as follows:

> [MR. GLASCOE]: I got to the store and got out of the car to enter the store, to go get my groceries, and just as I come across, there was a man ahead of me. He started to hesitate going in the store, and I went in there afterward. When I went in there, somehow or other - I can't explain it - my left foot got hooked on this rug, and it went like that, and then I went out. I don't know, I was knocked out. And when I went to get up, I couldn't get up. I just fell right on over, and I had pain and everything else.

[APPELLANT'S ATTORNEY]: Did you have a cane with you on that date?

A. I had it. I always carried it.

Q. Did you use your cane as you walked into the store?

A. No. I carried that cane just in case it was necessary, if I got tired. I used to go on walks, and whenever I got tired or exhausted, I used the cane. So, I had it with me.

Q. How far were you into the store before you fell?

A. Just after you get over the threshold.

Q. So, you were inside the store?

A. Yeah, I was inside the store.

Q. And what type of floor was on the - do you know what type of floor was in the store at the time?

A. It looked to me like it was tile or cement.

Q. Was there something on top of that floor?

A. The rug.

Q. Does this rug have anything to do with your falling?

A. I got tangled up in it.

Q. Can you explain again for the jury how the rug caused you to fall?

A. Mr. Adams, as I got on the rug and put the cane down to take my next step, my left foot came, and the rug was hooked in there somehow or another, and as turned, I tried to get it loose. At that time I slipped and I fell, and back I went. I tried to get up and everything. I was in pain and everything else. I couldn't get up.

* * * *

Q. What caused you to fall in the supermarket?

A. I got messed up in that rug.

On cross-examination, appellant testified as follows:

[APPELLEE'S ATTORNEY]: You never saw, prior to your accident, that floor mat laying other than perfectly flat on that floor, did you?

A. I've seen them up there, when it's rumpled up and everything else. That day it was laying flat on the floor.

* * * *

Q. If I understand what you have told us earlier, as you walked in the doorway, you stepped onto the mat with one foot, and somehow your other foot got tangled up in the mat, and you fell down?

A. That's what I'm saying.

Q. You don't know how your other foot got tangled up in that mat?

A. I can't look behind me, sir. No, I don't know, sir.

Q. Whatever it is, for some reason your foot got tangled, and you stumbled and fell?

A. That's what I'm telling you, sir.

Q. How that happened, who knows?

A. I don't know.

On re-direct, appellant reenacted his fall and testified as follows:

[APPELLANT'S COUNSEL]: Mr. Glascoe, you were just shown a document, Defendant's Exhibit Number 6. What did you mean by the word "trip"?

A. Well, that's the word that I used. What happened, because - could I sort of demonstrate it to you, Mr. Adams?

Q. Sure, if you don't hurt yourself.

THE COURT: Help him down, please.

Q. Watch the chair.

A. No, that's okay. I'll show you what I'm trying to say.

Q. Okay.

A. I'll get out here where everybody can see me.

Q. Let me get you your cane.

A. Can everyone see me? I'll try and explain to you all what I'm trying to say.

Q. Explain what you mean when you say "tripped."

A. This is the door right here. About along here was a carpet right here, okay. As I entered the door, I put my foot up there. That's on the carpet.

> I'm holding the stick here. This foot, as I went to lift it, it got caught into that carpet, and by swinging like I did, I went down this away. And I don't know after that. I just saw as far as - that's what happened with the carpet. He's talking about the rug coming up or something. I don't know if my toe got into the carpet like that and I had nothing to catch on, and that's when I went down.
>
> Q. Thank you, Mr. Glascoe. If you can get back on the witness stand?

Dr. Rosen was permitted to testify as a "slip and fall/trip and fall expert witness," but on a very limited basis. The sum and substance of his testimony was that the mats in question did not cover a sufficient area of the entrance way, they were not "non-slip" which would have caused them to resist bunching, and they did not have beveled edges. According to Dr. Rosen had no personal knowledge as to what caused appellant to fall on the day in question.

Based on our review of the evidence, and viewing it in the light most favorable to appellant, we agree with the trial court. There is simply no evidence that the mat in question slipped, bunched, or that appellant fell on the edge of the mat. Consequently, there is no evidence that the propensity to bunching, the lack of beveling, or the fact that the mat was not "non-slip" caused appellant to fall. Negligence in using the mats or in failing to inspect, if any, was not a proximate cause of appellant's fall.

Appellant argues that his in-court demonstration constituted evidence of causation. The demonstration is not in the record and not reviewable by us, except to the extent that it appears in the transcript portion reproduced above. Appellant also refers to photographs of mats, which show "ridges." The

photographs in evidence, however, do not purport to show the mats as they existed in the time of the accident. In short, there is no evidence to show that any one or more of the alleged defects caused appellant's fall. Some evidence of causation is required. See Moulden v. Greenbelt Consumer Services, Inc., 239 Md. 229, 232 (1965); Moore v. American Stores Company, 169 Md. at 549.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

APPENDIX C

In The
Court of Special Appeals

September Term, 1997
No. 905

GEORGE GLASCOE

Appellant,

v.

SHOPPERS FOOD WAREHOUSE MARYLAND CORP.

Appellee.

Appeal from the Circuit Court for
Prince George's County, Maryland
(Hon. Thomas P. Smith, Associate Judge)

RECORD EXTRACT

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THE COURT: Anything else.

MR. BRODERICK: No. I think that the Court has everything.

THE COURT: In reviewing this motion you do have to view the evidence in the light most favorable to the Plaintiff, as I did in this case. I can tell you, that the evidence in this case is that Mr. Glascoe, who brings true the meaning of the word gentleman, he appears to be a gentleman, carries himself as a gentleman. He looks like a gentleman, and he is.

There is absolutely no evidence from which I could conclude, that the Plaintiff's cane got caught in the rug. Mr. Glascoe didn't say that, and in fact he was asked that questions. My cane didn't get caught. It was my foot that got caught up in the rug.

What are the deficiencies that the Plaintiff needs to prove? They proved

that one of the -- two, if not both of the rugs were worn or could be considered worn. My recollection though, and it's not controlling with the decision, is at least the second rug was more worn than the first, and Mr. Glascoe by his own testimony, was just inside of the door, and, therefore, on the first rug, if those rugs were in the same position.

Second, the Plaintiff's expert, while I understand the Defendant doesn't like him to be called an expert, but, frankly, all he has shown is that he's more than 25 miles from home, and had a briefcase. The expert said, worn rugs should not be put out.

That didn't require expert testimony. He said that the rugs should not have been the loose type, and should be fitted, and flexible rugs, so that they would not

bunch up, and he faulted the defendant for that.

He said that if the rug in question is not rubber backed, has the little rubber knobs on it, so it can't slide or slip, it should be a non-slide or slip.

Finally, he said there needs to be a beveled edge on the rug, so one cannot catch ones foot on the rug. That is my recollection of the assertions of negligence.

What is the problem? The problem is we don't know why Mr. Glascoe fell, and that's why I said Mr. Glascoe is an absolute gentleman, because if would have been so easy for him to have said, I slipped because the rug was worn, and I slipped in a worn spot, and he didn't say that, because he didn't know that, or he could have said, I slipped, because the rug bunched up, and he didn't say it,

because he didn't know that to be true.

He could have said, I slipped because the rug slipped or moved under my foot, and again, he didn't say that, because he didn't know it, and he could have said, I tripped as his counsel has tried to say repeatedly on the edge of the rug, but he didn't say that.

I think that is not what he remembers, and what he remembers is, his foot, quote, got tangled or caught up in the rug, and he didn't know why he fell, and even though there is this evidence from which a fact finder could find was a breach of duty, and including the failure to inspect on a frequent enough basis, and I will get to that in a second, but, there simply is no evidence that the breaches of duty identified, proximately or were a approximate cause of Mr. Glascoe's injury.

While there is some dispute between counsel as to the testimony on inspections, I don't believe that it's dispositive even if the matter had been inspected on an hourly basis, a half hourly basis, or a minute basis.

We don't know what the defect was. So it is not knowing what the defective condition, or alleged defective or dangerous condition was. The issue how frequently the premises were inspected, and, therefore, when this condition occurred, doesn't arise in this case.

The Defendant is not an insurer of the safety of people that come on to the property. This is truly the definition of an accident, and this is something completely unintended, unforeseeable, and not preventable.

There is no point in granting a new trial, which I would be inclined to do,

because Mr. Glascoe's testimony isn't going to change, and he is the only person who knows what happened.

Miss Spivey's testimony was clearly rejected by the jury.

It is very difficult for me to do this, considering how personable Mr. Glascoe is, but the Motion for Judgment Notwithstanding the Verdict is granted, and Madam Clerk we'll enter a judgment in favor of the Defendant, against the Plaintiff for costs.